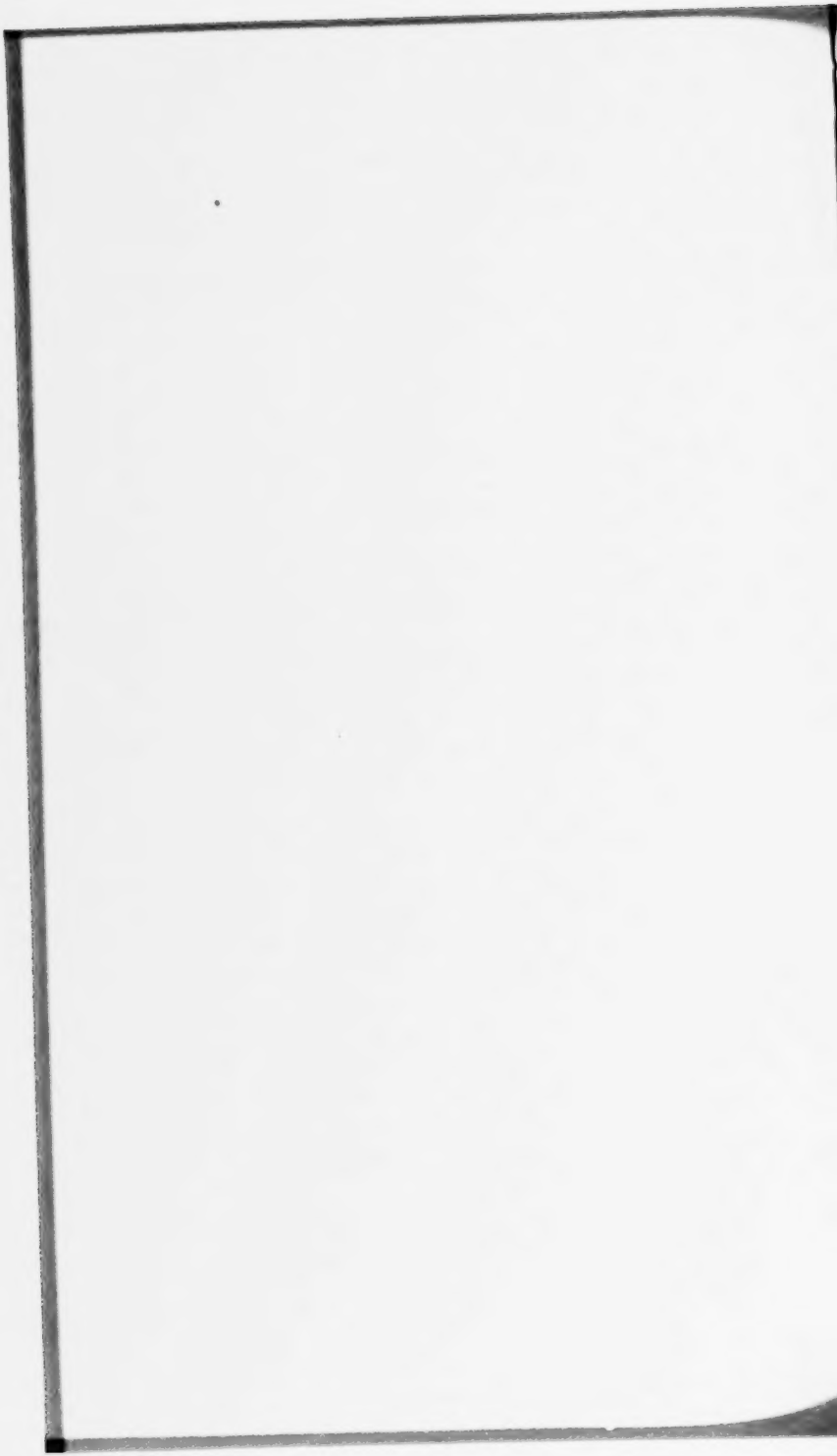

TABLE OF CASES AND AUTHORITIES CITED
TOPICAL INDEX

Cases

Codes

IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1947

No. 338

HAZEL E. McCLELLAND, on behalf of Herself and all other Taxpayers of the County of Los Angeles, State of California, of the same class and similarly situated,

Petitioner,

vs.

THE BOARD OF SUPERVISORS, in its capacity as the BOARD OF EQUALIZATION of the County of Los Angeles, State of California, Etc., et al,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

A.

STATEMENT OF FACTS

This case involves the equalization of assessed values for taxation purposes. The properties represented by petitioners are mainly multiple dwellings,

i.e., apartment houses and hotels. The comparison properties are single family dwellings.

Petitioners have not contended that the subject properties are assessed in excess of 50% of market value (which is the level of assessment commonly used in California). The petitioners' contention has been that the other properties, the single family dwellings, were assessed at less than 50% of market value thereby placing a greater proportion of the tax burden upon multiple dwellings.

Respondents have conceded at all times that if that be the fact then the assessments would be non-uniform, discriminatory and erroneous. But respondents have contended throughout that the facts do not support petitioners' concededly correct legal premise.

The matter was first heard by the County Board of Equalization (which under California law is a quasi-judicial body). Upon conflicting evidence that board held that the properties were already equalized and denied the applications for reduction.

Petitioners sought and obtained a review by certiorari from the State Supreme Court. That court reviewed the conflicting evidence, both that tending to support petitioners (R. 105-108) and that tending to support respondents (R. 108-111) and concluded that while there was a conflict there was substantial evidence to support respondents. The California Supreme Court stated in its opinion:

" . . . However we are satisfied that, as hereinafter appears more fully, upon any view as to the scope of this proceeding petitioner has not established that the evidence before the board of equalization was insufficient to support its determination as to the correctness and legality of the disputed assessments; nor, upon any view of the scope of certiorari, is the showing here sufficient to authorize annulment of the board's order for any vice in its own procedure." (R. 104.)

And also:

"Unquestionably the record of proceedings before the board reflects substantial evidence which tends to support the claims of petitioner and of those whom she represents, but by reason of this material and extensive conflicts which we have reviewed we feel bound to conclude that the right to the annulling action of certiorari has not been established." (R. 112.)

The case was thus decided on the facts and the basic question of law was not decided by the California Supreme Court contrary to the contention of petitioner. The major portion of the opinion is a summary and analysis of the facts. The court did recite briefly the applicable legal principles (R. 102-104) as to which there has been no dispute. A comparison of those legal principles with what petitioners now assert to be the correct legal principles (Pet., pp. 11 et seq.) demonstrates that there is no conflict and no legal issue presented.

Before discussing the conflict in the evidence it should be noted that petitioners' witness was a privately employed tax expert who had had only 15 days to analyze the assessments, i.e., from the first Monday in July, when the assessment roll is completed and open to inspection,[1] until July 22nd the date of the hearing. (R. 20.) He admitted that he had no personal knowledge of the current assessment methods of the assessor (R. 45, 46) and this admission was noted and commented upon by the California Supreme Court. (R. 107.) Respondents on the other hand are supported in their position by the testimony of the assessor (R. 93, 94), the assistant assessor (R. 50-63, 77-79) and the chief of the building division (R. 79-80), who are fulltime officers and employees and who testified from direct and personal knowledge of the facts.

Petitioners' tax expert contended that the assessor had used a different method with respect to multiple dwellings and single family dwellings, to wit, that he had used a straight line method of depreciation for the latter and a reducing balance method of depreciation for the former. (R. 37.) Much of his testimony was devoted to explaining the differences. (R. 38-41.) The assessor flatly denied the use of a different method of depreciation (R. 60, 61) and asserted that the

---

[1]Sec. 616 Revenue & Taxation Code. On or before the first Monday in July, annually, the assessor shall complete the roll. . . . .

Sec. 1602 Revenue & Taxation Code. Until the equalization is finished, the local roll shall remain in the clerk's office for the inspection of all persons interested.

method used (set forth in detail in the printed record at page 50 to page 58) was used as to all properties. (R. 59, 61.)

Petitioners also contended and still contend that with respect to multiple dwellings the assessor predicated his market values on the then current prices but that with respect to single family dwellings he ignored current prices. The assessor testified that he took sales prices into consideration (R. 55-57) but only as one element of market value and not as the controlling factor. With respect to the subject properties he testified that he discounted current prices at least 50% (R. 69) because the restricted earning power brought about by O. P. A. regulations did not justify a higher market value. (R. 70.) With respect to single family dwellings he testified that in his opinion sales prices should be discounted as much as 60% because of the bonus paid by purchasers to obtain or retain shelter as a result of the housing shortage during and following the war. (R. 60) (It should be noted that the lien date involved in this proceeding is the first Monday in March, 1946, shortly after the termination of World War II, and consequently that the testimony involved in this proceedings must be viewed in the light of conditions as they existed at that time.)

Petitioners' own tax expert testified in this regard as follows:

"Q. . . . Can you tell us how much of the sales price consists of this premium or bonus paid for mere occupancy?" (R. 49.)

"A. I think that you might even say that it exceeds sound value by as much as 100%." (R. 50.)

Further demonstrating the abnormality of the sales of single family dwellings the evidence discloses that in 1940 43% of the six hundred fifty thousand dwellings were occupied by tenants (R. 36), whereas in 1946 only 15% to 20% were so occupied. (R. 69.) The difference of 23% to 28% is strong indication that a tremendous number of persons were forced to buy to avoid being dispossessed or to obtain or retain shelter.

The assessor testified that the increase in value of multiple dwellings occurred because of several factors, chief of which were (1) increased prices paid in a free market (such purchasers not being under compulsion to purchase in order to obtain shelter but purchasing for investment) (R. 61), and (2) increased income (resulting despite the O.P.A. from increased percentage of occupancy and lack of necessity to make repairs and alterations.) (R. 77-79, 31.) But as already noted, the second factor did not justify giving full weight to the first factor and hence even as to this class of property he discounted price at least 50%. (R. 69.)

While respondents contended that current prices were not controlling as a matter of law but were only

one factor in determining market value, the Supreme Court of California in the light of that evidence did not feel called upon to decide the issue as one of law but decided it adversely to petitioners on the facts presented. The California Supreme Court held that even in relation to prices there had been substantial equality of treatment as between multiple dwellings and single family dwellings, the court stating:

> " . . . However, as recited hereinabove, the witness Hartman testified that as to single-dwellings 'you had to deduct 60% of the sales price to get down to the market value' and that as to apartment house properties 'we would have at least twice the assessed value we have now' if sales data alone were taken as evidence of value. It thus appears that the board could properly find that the assessor fixed the market value in each of the two types of improvement at approximately 50 per cent of their sales price value and that there was no arbitrary inequality between them in this respect." (R. 111.)

Thus the Supreme Court of California, after reviewing all of the evidence (the entire record of the Board of Equalization being before it), held that there was sufficient and substantial evidence that the assessments were equalized not only with respect to market value but also with respect to sales price value.

The law was not decided adversely to petitioners but it was held that even conceding the law to be as

stated by petitioners there was substantial evidence to support the decision of the County Board of Equalization.

It was not necessary for the State Supreme Court on review by certiorari to go beyond that and the Supreme Court of California did not do so, although it might well have concluded that the great weight of the evidence supported the decision of the Board of Equalization.

The same is true of this review by certiorari. Petitioners again make the mistake that they made before the State court of relying upon the testimony most favorable to their position and ignoring the testimony which supports respondents' position.

Even in setting forth the facts most favorable to their position petitioners have not been entirely accurate. Thus on page 5 of their petition they assert that the assessor based his assessments on "unit cost" but the record cited (R. 25-27) shows clearly that the assessor used "unit values". This confusion of "cost" and "value" and "price" and "value" appears repeatedly in the petition.

Also, on page 8 of the petition it is asserted:

> "(5) That in respect to the 650,000 single unit dwellings in the county, the market price thereof had increased in and prior to 1946 as much as the market price of multiple unit dwellings. (R. 67, 68, 59, 60)."

In view of the way petitioners confuse "price" and "value" and in view of petitioners' assertion on page 15 of the petition that "market value" and "market price" are identical we must assume that petitioners by that statement intended to tell this Court that the record cited established that market values had increased equally as to both classes of property. An examination of the record cited (R. 67, 68) discloses that the testimony was that the "value" of single family dwellings had not changed at all.

Again, on page 8, petitioners assert that the assessor admitted that the price of single family dwellings had increased "in general" 150%. The statement (R. 60) was that "in many instances" the price exceeded value by "as much as" 150% (i.e., that as much as 60% of the sales price represented the bonus for occupancy).

Finally, on page 9 of the petition, petitioners set forth part of the assessor's testimony with respect to single family dwellings and compares it with part of the testimony of the assessor with respect to multiple dwellings. Petitioners' second quotation begins with the words "On the contrary". The implication seems to be that a contrary method of assessment was used. Actually there is some omitted testimony between the two quotations and the phrase "On the contrary" refers to a contention made by petitioners' own tax

expert. The assessor's statement was that, contrary to the assertion of petitioners' tax expert, the same method of assessment was used as to all classes of property. (R. 60, 61.)

B.

THE QUESTIONS SOUGHT TO BE RAISED

Petitioners pose two questions, one relating to the 14th Amendment to the Constitution of the United States, and the other relating to our State Constitution. Both questions are whether the taxing authorities may assess property of petitioners "upon a greater proportion of market value" than the property of other taxpayers.

With respect to that question our answer is the same as petitioners. Neither the assessor, the County Board of Equalization nor the State Supreme Court has contended that such could be done. The decision sought to be reviewed does not hold that it may be done. If those questions be the ones which petitioners wish to have decided, they have already been decided in favor of the petitioners by the State court decision sought to be reviewed and there is no issue before this Court.

What petitioners actually seek is to have this Court again weigh the evidence and decide the facts in their favor.

C.

CERTIORARI DOES NOT LIE TO REVIEW A DISPUTED QUESTION OF FACT

For the purpose of this point it is sufficient to point to the record (R. 50-58) wherein the assistant assessor testified to his general method of assessment which was in substance to consider all of the factors entering into market value and after ascertaining market value to take 50% thereof for assessment purposes, and to the record (R. 59, 61) wherein he testified that this method had been applied uniformly as to all property. Even if there were no other testimony supporting the assessments that alone is sufficient to support the decisions of the Board of Equalization and State Supreme Court.

On certiorari this High Court will not review the weight of the evidence before the State Court. (*Whitney v. People of the State of California,* 274 U. S. 357, 367, 71 L. Ed. 1095, 1102.)

The rule is that the decision of the State Court upon a question of fact cannot be made the subject of inquiry before this court. (*Grayson v. Harris,* 267 U. S. 352, 359, 69 L. Ed. 652, 656; *Dower v. Richards,* 151 U. S. 658, 668, 38 L. Ed. 305, 309; *Ward & Gow v. Krinsky,* 259 U. S. 502, 511, 66 L. Ed. 1033, 1036; *Baltimore and Ohio S. W. R. R. Co. v. Burtch,* 263 U. S. 540, 543, 68 L. Ed. 433, 436; *Telluride Power Trans-*

mission Co. v. Rio Grande W. R. Co., 175 U. S. 639, 645, 44 L. Ed 305, 308; *Carpenter v. Williams,* 9 Wall. 785, 786, 19 L. Ed. 827, 828, 11 C. J. 204.)

As was stated by this Court in *Portland R. L. & P. Co. v. Railroad Commission of Oregon,* 229 U. S. 397, at 412, 57 L. Ed. 1248, at 1259:

> " . . . In this case the facts found by the lower court and adopted in the supreme court are supported by competent testimony; and this court does not sit to retry issues of fact thus heard and determined by the properly constituted tribunals of the state having jurisdiction of the subject."

Similarly here the Board of Equalization tried the facts and found there was no discrimination. The State Supreme Court reviewed all of the evidence and held that there was sufficient evidence to support the conclusion not only that the values were equalized with respect to market value but also with respect to sales prices. The decision being supported by competent evidence (and as we believe by the great weight of the evidence) this High Court should not sit to retry the facts.

D.

UNDER BOTH THE CALIFORNIA AND FEDERAL DECISIONS MARKET VALUE FOR TAX PURPOSES IS THE SAME AS MARKET VALUE FOR OTHER PURPOSES.

Petitioners concede (Pet. pp., 17-18) that:

> "The California courts have held in numerous decisions that, for assessment and taxation purposes, the terms 'value' and 'full cash value', as used in the Constitution mean 'market value.' "

Petitioners also concede (Pet. pp., 12, 13) that this Court, in *San Francisco Natl. Bank v. Dodge,* 197 U. S. 70, 49 L. Ed. 669, has held, with reference to California property and tax statutes, that market value is the criterion for assessment purposes.

Petitioners are confused by the definition in the California statute (Sec. 110 Revenue & Taxation Code) that "value", "full cash value" and "cash value" mean "the amount at which property would be taken in payment of a just debt from a solvent debtor."

Petitioners conclude that that means that "price" alone is to be the criterion of market value. The courts of California have not so held.

In the first place our courts have marked the distinction between the word "value" as used alone in a statute and the word when qualified as in the phrase "cash value." The qualifying word "cash" has been held to refer to a lower value. *Orpheum Circuit, Inc., v. Los Angeles,* 12 Cal. App. (2d) 257.

Such lower value by administrative practice, judicial decisions and legislative recognition has come to mean 50% of market value. Thus, in *Orpheum Circuit Inc., v. Los Angeles,* 12 Cal. App. (2d) 257, at 261, it is stated:

> " . . . The practice of the Assessor of Los Angeles County and of other officials of Los Angeles dealing with the assessing of property for the purposes of taxation within the City of Los Angeles, of determining the actual cash value thereof by first determining the fair market value of such taxable property and by using an amount not exceeding fifty per centum of such fair market value as determined by said Assessor, is hereby confirmed and ratified."

See also: *Rittersbacher v. Board of Supervisors,* 220 Cal. 535, at 543-4, wherein the court said:

> " . . . In arriving at the value of all property for the purposes of assessment the assessor is guided generally by Section 3617 of the Political Code which defines the term 'value' as 'the amount at which the property would be taken in payment of a just debt from a solvent debtor.' This value is expressed in Section 3627 of the Political Code as the 'full cash value' for purposes of assessment. It is the assessor's recognized duty to see that the valuation placed on various kinds of property shall be in proportion to the worth of such properties. If it is proportional and all are treated alike, no one contends that the taxpayers must be charged a

full one hundred per cent, for such is not required by the law."

Also: *Hammond Lumber Co. v. County of Los Angeles,* 104 Cal. App. 235, at page 242:

" . . . This value was then multiplied by the number of acres, and in accordance with the usual practice in assessing property in general, one-half of the amount so arrived at was adopted as the assessed value of the leasehold interest."

and at page 244:

" . . . So by a process which need not be followed here with particularity, the witness figured the full market value of the leasehold interest at $409,313, one-half of which amount, or roughly $204,650, was taken as the 'full cash value' for taxation purposes."

Also: *Bandini Estate Co. v. County of Los Angeles,* 28 Cal. App (2d) 224, at 232:

" . . . It was stipulated that it was the general method of assessment in Los Angeles County in 1931 to assess parcels of land at not to exceed 50 per cent of their market value."

Also: *Eastern-Columbia, Inc., v. County of Los Angeles,* 61 Cal. App. (2d) 734, at 739:

"Upon this appeal it is conceded by all parties, as was found by the trial court, that the assessor was required to assess both lands and improvements in 1941 at 50 per cent of their respective market values."

The practice of recognizing "cash value" as being 50% of market value again appears in the present case. (R. 108.)

Also, the California Legislature has recognized that assessed values are 50% of market value. Section 2983 of the Streets & Highways Code reads as follows:

> "To determine the true value of property for this division, the assessed value of such property as shown on the last equalized assessment roll of the county in which such property is situated, available on the date the report is commenced, shall be multiplied by two and the result expressed in dollars shall be the true value of such property."

Thus the term "cash value" and the definition thereof have come to mean in California no more than that it is equivalent to 50% of market value. Our courts have not let the word "cash" or the phrase "amount at which property would be taken in payment of a just debt" qualify the meaning of market value as a standard but only to justify the use of 50% thereof for assessment purposes. Petitioners in stressing the word and phrase so as to give a narrow meaning to the concept of market value and so as to make "price" of other properties the one controlling factor finds no support in California decisions.

This Court has defined market value for assessment purposes similar to the California Courts. In the case

of *Great Northern R. Co. v. Weeks,* 297 U. S. 135, at 137, 80 L. Ed. 532, at 536 this Court stated:

> "The principles governing the ascertainment of value for the purposes of taxation, are the same as those that control in condemnation cases, confiscation cases and generally in controversies involving the ascertainment of just compensation. *West v. Chesapeake & P. Telegraph Co.,* 295 U. S. 662, 671, 79 L. Ed. 1640, 1646, 55 S. Ct. 894.
>
> In determining the amount of the assessment the board was not bound by any formula, rule or method, but for guidance to right judgment it was free to consider all pertinent facts, estimates and forecasts and to give to them such weight as reasonably they might be deemed to have. Courts decline to disturb assessments for taxation unless shown clearly to transgress reasonable limits. Over-valuation is not of itself sufficient to warrant injunction against any part of the taxes based on the challenged assessment; mere error of judgment is not enough; there must be something that in legal effect is the equivalent of intention or fraudulent purpose to overvalue the property and so to set at naught fundamental principles that safeguard the taxpayers' rights and property. *Rowley v. Chicago & N. W. R. Co.,* 293 U. S. 102, 109-111, 79 L. Ed. 222, 226-228, 55 S. Ct. 55. The assessment is presumed to have been rightly made on the basis of actual value. Its validity must be tested upon consideration of the facts established by the evidence and of those of which judicial notice may be taken."

While that case did not involve alleged discrimination but rather assessed values in excess of market values (a problem not involved here) the definition of what constitutes value for taxation purposes is equally applicable.

What petitioners are really trying to urge is that even though market value be the standard still under our statutory definition of "cash value" the assessor must limit the factors that he considers in arriving at market value to the one element of price. However, California has long since held that such statutory definition requires no such result. In the case of *Utah Const. Co. v. Richardson,* 187 Cal. 649, at 652-3, the California Supreme Court held that the legislature had not fixed the "manner" or "mode" of ascertaining cash value, that the "assessors must be guided by the general principles which everywhere determine the valuation of property, independently of statutory rules" and that "it was permissible for the legislature to commit to the Board of Equalization the duty of selecting the mode of ascertaining the cash value."

The latter decision was quoted with approval by the California Supreme Court in the very recent decision of *Kaiser Co., Inc., v. Reid,* 30 A. C. 614, (Advanced California Reports) at page 626, 184 Pac. 2d ..... The Supreme Court there prefaced its quotation with the statement:

> " . . . The Revenue and Taxation Code requires that 'all taxable property shall be assessed at its full cash value' (Sec. 401), which means 'the amount at which property would be taken in payment of a just debt from a solvent debtor' (Sec. 110). The state Constitution authorizes local boards of equalization 'to equalize the assessment of the property contained in (the) assessment-roll, and to make the assessment conform to the true value in money of the property contained in said roll. . . . ' (Art. XIII, Sec. 9.) But the precise method to use in calculating 'full cash value' is not prescribed by law."

Thus the statutory definitions relied upon by petitioners have not been construed by our California courts as limiting the mode or method of arriving at assessed value to the single consideration of price. So long as assessed values are in proportion to the customary accepted concept of market value the California statutes are satisfied. Whether that construction of the statutory definition is right or wrong presents no Federal question. In any event it conforms to the Federal definition contained in *Great Northern R. Co., v. Weeks*, 297 U. S. 135, 80 L. Ed. 532.

The assessor did arrive at market value and took one-half thereof for assessment purposes. He did take the prices of other properties into consideration (R. 55-57), as we concede of course should be done, but he did not give such sales prices any greater weight than the facts and circumstances surrounding such sales

prices indicated they should. This was done uniformly as to all properties. (R. 59, 61.) Thus under the accepted definition of market value there has been uniformity.

It should be again emphasized, however, that even if this traditional and accepted definition is wrong and "price" is the one controlling factor, still the California Supreme Court has found:

> " . . . However, as recited hereinabove, the witness Hartman testified that as to single-dwellings 'you had to deduct 60% of the sales price to get down to the market value' and that as to apartment house properties 'we would have at least twice the assessed value we have now' if sales data alone were taken as evidence of value. It thus appears that the board could properly find that the assessor fixed the market value in each of the two types of improvement at approximately 50 per cent of their sales price value and that there was no arbitrary inequality between them in this respect." (R. 111).

And petitioners consequently have not been damaged. Since the decision can be supported on that non-Federal factual ground, actually this whole point is merely cumulative and not essential.

CONCLUSION

Neither the assessor, the Board of Equalization nor the Supreme Court of California has questioned the necessity of assessing all property at the same level in relation to market value. No point of law has been decided by the California courts contrary to the decisions of this Court. The case actually turned upon a question of fact.

We have, however, attempted to go further in this brief and meet the petitioners' case upon their own grounds. Even so, we find not only that the courts do not subscribe to their limited concept of market value but also even if their concept be correct the assessments were substantially equalized on the basis of "price", as well as market value.

Respectfully submitted,

HAROLD W. KENNEDY,
County Counsel,
and
A. CURTIS SMITH,
Assistant County Counsel,
Attorneys for Respondents.